

Remarks

Claims 3, 5, 6, 17, 27, 30-35 and 40 have been withdrawn from consideration and claims 1, 2, 4, 7-16, 18, 36-39, 41, 42, and 47 have been canceled, leaving claims 19-26, 28, 29, 43-46, and 48-53 pending and at issue in the present application. Claims 24-26 and 47 have been indicated allowable if rewritten in independent form. Claims 51-53 have been added and include all of the recitations of claims 24-26, respectively, thereby placing such claims in condition for allowance. In addition, claim 43 has been rewritten to incorporate all the recitations of claim 47, thereby placing claim 43 in condition for allowance.

Applicants respectfully traverse the rejection of claims 19-23, 28, 29, 43-46, 48 and 50 as anticipated by or obvious over Ostrowsky U.S. Patent No. 3,760,988. Applicants further traverse the rejection of claim 49 as obvious over Ostrowsky in view of Henry *et al.* U.S. Patent Application Publication No. 2003/0006252.

Amended claim 19, and claims 20-26, 28, and 29 dependent thereon, specify an actuator cap including a main wall that extends generally along an axial dimension thereof and has a varying cross-sectional size. An actuator member extends transversely to the axial dimension and terminates at an outer peripheral surface wherein the outer peripheral surface extends laterally beyond a portion of the main wall but does not extend beyond a greatest lateral extent of the main wall. An upright portion that has a curved outer surface is disposed adjacent the actuator member. The curved outer surface is engageable with an internal surface of a housing to guide the actuator member and prevent inadvertent actuation of the actuator member and the housing is spaced outwardly from the main wall when the actuator is placed in the housing.

Amended claim 43, and claims 44-46 and 48-50 dependent thereon, recite an actuator cap including a main wall that extends generally along an axial dimension thereof and has a varying cross-sectional size. An actuator member extends transversely to the axial dimension and terminates at an outer peripheral surface wherein the outer peripheral surface extends laterally beyond a portion of the main wall but does not extend beyond a greatest lateral extent of the main wall. An upright portion that has a curved outer surface is disposed adjacent the actuator member, wherein the curved outer surface prevents inadvertent actuation of the actuator member and the upright portion includes an arcuate gusset on an internal surface thereof.

Neither Ostrowsky nor Henry *et al.* discloses or suggests an actuator cap including a main wall, an actuator member, and an upright portion having a curved outer surface that is engageable with an internal surface of a housing that is spaced outwardly from the main wall or an upright portion having an arcuate gusset on an internal surface thereof, as recited by claims 19-23, 28, 29, and 43-50.

Rather, Ostrowsky discloses a safety actuator means including a cap 24 and a toggle-type actuator 26 that are integrally formed by injection molding. The cap 24 has a hollow body 28 with an annular bottom portion 30 that is adapted to seat on an annular rim 14 of an aerosol container 10. The exterior surface of the body 28 has two opposite sides 36 which are recessed inwardly from an arcuate circumference 34. The two opposite sides 36 are substantially parallel to each other and have a slight inward slope from the bottom portion 30 to a top 38 of the cap 24. A tab 68 of the toggle-type actuator 26 projects through each rectangular-shaped opening 40 that is disposed on both sides 36 of the cap body 28. A front side 42 of the cap body 28 is adapted to receive a projecting portion 75 of a discharge nozzle 74 that is operatively connected to the toggle-type actuator 26. A button-type digital depressible member 61 is operatively connected to the toggle-type actuator 26 and protrudes through an opening 48 in a top wall 45 of the cap body 28. Both tabs 68 of the toggle-type actuator 26 and the button-type digital depressible member 61 must be depressed to discharge the contents of the aerosol container 10 through the nozzle 74 disposed within the cap 24. The Ostrowsky specification states that: "Not until there is a three point pressure applied to the toggle-type actuator will the aerosol valve stem 22 operate to an open position. This makes it virtually impossible for a child to operate the aerosol unit and provides the safety factor." (Col. 4, lines 51-55 of Ostrowsky).

Henry *et al.* discloses an improved aerosol valve assembly for use with a pressurized whipped cream dispenser. The valve assembly 10 includes a mounting cup 12, a valve body 26, a valve stem 40 having a hollow cylindrical stem element 48, a sealing gasket 52, a biasing spring 54, and a valve actuator 56. A pedestal 20 is centrally formed within the mounting cup 12. The actuator 56 includes a tubular body 58 having an upper or discharge end and a lower or base end. The discharge end includes a plurality of peripherally spaced slots 64 defining inwardly curved fingers 62. The base end of the actuator 56 is formed with an outwardly extending flange 66 and a downwardly extending skirt 68. A support partition 72 is disposed between the upper and lower ends of the actuator 56. A centrally aligned

nipple 76 extends downwardly from the support partition 72, which slidably fits over the stem element 48. The nipple 76 and the stem element 48 may be fitted with retaining means such as ribs 78 and 80, located on the inside circumference of the nipple 76 and outer circumference of the stem element 48, respectively. The rib 78 on the nipple 76 snaps over the rib 80 on the stem 48 when pressed together and locks the actuator 56 to the valve stem 40.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Schering Corp. v. Geneva Pharms., Inc.* 339 F.3d 1373, 1379 (Fed. Cir. 2003). Ostrowsky does not show each and every element as set forth in claims 19-23, 28, 29, 43-46, and 48-53. Therefore, it follows that such claims are not anticipated by Ostrowsky.

Further, to support a *prima facie* case of obviousness based on a combination of prior art elements, an examiner must establish “a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference.” Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* 72 Fed. Reg. 57,526 (Oct. 10, 2007). In addition, the Supreme Court has held that the teaching, suggestion, motivation (TSM) test should not be strictly applied. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct 1727, 1741. However, the Court also noted that a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *Id.* Instead, “it can be important to identify a reason that would have prompted a person of ordinary skill in the art to combine the elements in the way the claimed new invention does.” *Id.* This has not been shown in the present application.

Applicants have carefully considered the Examiner’s statements in paragraph 8 of the pending Office action. However, the examiner has not identified any reasons why a person of ordinary skill in the art would have been prompted to combine the disclosure of Ostrowsky with the disclosure of Henry *et al.* to arrive at structure recited by claim 49. Still further, as noted above, the combination of Ostrowsky and Henry *et al.* fails to disclose or suggest all of the elements of claim 49. Therefore, it follows that the claims are not rendered obvious by the applied art.

Reconsideration and allowance of the foregoing claims are respectfully requested. The examiner is encouraged to call the undersigned attorney to discuss the pending claims for the purpose of expediting this prosecution.

Deposit Account Authorization

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

McCracken & Frank LLP
200 W. Adams, Suite 2150
Chicago, Illinois 60606
(312) 263-4700

By: 
William E. McCracken
Reg. No: 30,195

December 13, 2007

Customer No.: 28165